IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1328 of 2007

CHINNA RAM & ANR.
V/S
CIVIL JUDGE,(J.D.)NO.2,JODHPUR & ORS.

Mr. JITENDRA CHOPRA, for the appellant / petitioner

Mr. CS KOTWANI, for the respondent

Date of Order : 17.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial Court has allowed the application of the private respondent No.2 filed under Section 151 CPC, and has directed the petitioner decree-holder to file application under Order 21 Rule 97 CPC.

A look at the application filed by the applicant under Section 151 CPC shows that therein he has raised a dispute, about his right to continue in possession, and being not bound by the decree. In my view, in substance, the application does amount to raising obstruction, and instead of directing the decree-holder to file application under Order 21 Rule 97, rather the application filed by respondent No.2 itself should have been taken to be application under Order 21 Rule 97 CPC, and should have been adjudicated accordingly. To this learned counsel for

the respondent No.2 also has no objection.

Consequently, the writ petition is allowed, the impugned order dated 27.1.2007 is set aside, and the learned Executing Court is directed to treat the application of the private respondent No.2 filed on 28.9.2006 as application under Order 21 Rule 97 CPC,and the reply filed by the present petitioner to be the reply to that application, and inquire into the matter as provided by law, and decide it. It is also directed that the learned Executing Court should decide it most expeditiously.

(N P GUPTA),J.

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